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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPELLANTS: TESSMER, MICHAEL J., ET AL.

DOCKET NO.: 5035.143

SERIAL NO.: 10/671,893

FILED: 09/26/2003

EXAMINER: MOHANDESI, JILA M.

ART UNIT: 3728

TITLE: PRESSURIZED WATER-SOLUBLE POUCH

Mail Stop Appeal Briefs – Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Quarles & Brady Streich Lang LLP
One South Church Avenue, Suite 1700
Tucson, AZ 85701

CERTIFICATE OF MAILING

I hereby certify that on this 16th day of February, 2006, this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to: Mail Stop Appeal Brief – Patents, Commissioner for Patents, P.O. Box 1450, Alexandria VA 22313-1450.

By:

Alice B. Vanicek
Alice B. Vanicek

TRANSMITTAL OF BRIEF ON APPEAL

Dear Sir:

Pursuant to the provisions of 37 C.F.R. 1.192, the appellant is hereby submitting three (3) copies of a Brief on Appeal in the above-captioned patent application.

Please charge the \$250.00 appeal brief filing fee required by 37 C.F.R. 1.17(c), and any other cost or credit any overpayment associated with the filing of this Brief on Appeal, to our Deposit Account No. 17-0055.

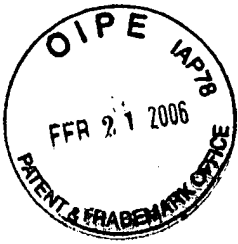
Respectfully submitted,

Gavin J. Milczarek-Desai
Reg. No. 45,801
(520) 770-8716 Telephone
(520) 770-2235 Fax

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By: *Alice B. Vanicek*
Alice B. Vanicek

TO THE COMMISSIONER FOR PATENTS

BRIEF ON APPEAL

Dear Sir:

This is an appeal from the final rejection dated 23 September 2005.

REAL PARTY IN INTEREST

The real party in interest is Gowan Milling Company, LLC, the assignee of the entire right, title and interest in the above-identified application.

RELATED APPEALS AND INTERFERENCES

No related appeals or interferences are currently pending.

STATUS OF CLAIMS

Claims 1-16 were originally filed.

Claim 1 has been amended, claim 6 has been canceled and claims 7-16 have been withdrawn from consideration.

Claims 1-5 are on appeal.

STATUS OF AMENDMENTS

No amendment was filed subsequent to final rejection.

SUMMARY OF CLAIMED SUBJECT MATTER

Claim 1 is the sole independent claim under appeal and is directed to a container for a product intended for dissolution in a liquid. The container comprises a sealed pouch 16 made of a material that is soluble in the liquid, a product contained in the pouch 16 and a gas contained in the pouch 16 in sufficient quantity to cause the pouch to be resilient at ambient conditions (page 9, lines 4-6; page 10, lines 1-4 and 6-7; and page 10, line 14 to page 11, line 3). The gas in the pouch 16 is pressurized to at least 1-2 psig (page 10, lines 18-20).

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The sole ground of rejection to be reviewed on appeal is that of claims 1-5 under 35 USC 103(a) over U.S. Patent Application Publication No. 2002/0169092 to Catlin et al.

ARGUMENTS

For convenience, the appellants have attached as Exhibit A the drawings on file in the appellants' application. These drawings consist of Figures 1-3.

Also for convenience, the appellants have attached as Exhibit B a copy of the reference relied upon by the Examiner in the final rejection of the claims.

The appellants' claims specify a sealed pouch containing a product as well as a gas pressurized to at least 1-2 psig.

In rejecting the claims, the Examiner states that Catlin et al. disclose a sealed pouch soluble in a liquid, a product in the pouch and a sufficient quantity of gas in the pouch to cause the pouch to be resilient at ambient conditions. The Examiner holds that the pressure set forth in the claims would be obvious since it has been held that the discovery of optimum or workable ranges involves only routine skill where the general conditions of a claim are disclosed in the prior art.

To support the rejection of the claims, the Examiner points to Paragraph [0181] of Catlin et al. where it is stated that the ratio of an air bubble diameter to the maximum lateral dimension of a pouch will affect the compressibility of the pouch. The Examiner is of the opinion that the pressure is inherently changed when the volume of the air bubble is changed.

The appellants believe that it is an error to assume that the pressure inherently changes when the volume of the air bubble is changed because the realities of an automated packaging line have not been taken into account. Prior to the start of a packaging procedure, an operator sets the amount of product to be introduced into each package, and thereby the amount of air which is to be present in each package. Since Paragraph [0181] of Catlin et al. is directed to an air bubble in a compartment containing a liquid composition, let us assume that 10ml of liquid is to be introduced into a compartment having an overall volume of 20ml. Inasmuch as Catlin et al. disclose no means for pressurizing the air in the compartments being filled, each compartment will contain 10ml of liquid and 10ml of air at atmospheric pressure. During

operation of the packaging line, compartments are formed sequentially and conveyed to a filling machine which feeds 10ml of liquid into every compartment. The compartments are sealed following introduction of the liquid into the compartments.

Assuming now that the operator is instructed to reduce the amount of liquid in each compartment to 5ml, the operator resets the filling machine accordingly. Since, as noted above, Catlin et al. fail to disclose means for pressurizing the air in the compartments being filled, the result is a series of compartments filled with 5ml of liquid and 5ml of air at atmospheric pressure. There is no increase in pressure within the compartments but simply a replacement of 5ml of liquid with 5ml of air at atmospheric pressure. The change in volume of the air bubble in a compartment does not inherently cause the pressure inside the compartment to change.

The Board's attention is respectfully invited to the fact that the appellants do not recall one occurrence of terms such as "pressure", "pressurizing", "pressurization", "pressure increase", "psig", "superatmospheric pressure", etc. in Catlin et al., and certainly not in conjunction with the air in a pouch. What the Examiner has done is to read the appellants' disclosure into the reference. There is no basis in Catlin et al. to support an assumption that the air in a pouch of the reference is pressurized. Catlin et al. simply replace a volume of product with an equivalent volume of unpressurized air.

Considering once again Paragraph [0181] of Catlin et al., the appellants note that this paragraph is concerned with the problem of closing a dispenser, e.g., of a dishwasher, after a pouch has

been placed in the dispenser. The Board's attention is respectfully directed to the following disclosure in Paragraph [0181] of Catlin et al.:

“During the manufacture of the liquid compartment an air bubble is typically formed. This air bubble can reduce the compressibility of the pouch (emphasis by the appellants) and therefore the ease of closing the dispenser after placing the pouch therein.”

Clearly, Catlin et al. do not wish to have the compressibility of the pouch reduced. However, this is precisely what would occur if the pouch were pressurized. Accordingly, Catlin et al. teach away from the appellants' claims.

In view of the foregoing, it is respectfully requested that the rejection of the claims be reversed in its entirety.

Respectfully submitted,

Gavin Milczarek-Desai
Registration No. 45,801

(520) 770-8716 Telephone
(520) 770-2235 Fax

CLAIMS APPENDIX

1. A container for a product intended for dissolution in a liquid, comprising:
 - a sealed pouch made of a material that is soluble in said liquid;
 - a product contained in the pouch; and
 - a gas contained in the pouch in sufficient quantity to cause the pouch to be resilient at ambient conditions, wherein said gas is pressurized to at least 1-2 psig.
2. The container of claim 1, wherein the liquid is water, the material is water soluble and the gas is air.
3. The container of claim 2, wherein the pouch is made of polyvinyl alcohol.
4. The container of claim 2, wherein the product is a powder.
5. The container of claim 2, wherein the product is a liquid.

EVIDENCE APPENDIX

Exhibits A and B have been attached for the Board's convenience.

RELATED PROCEEDINGS APPENDIX

Not applicable.

EXHIBIT A

Figures 1-3 on file in the appellants' application.

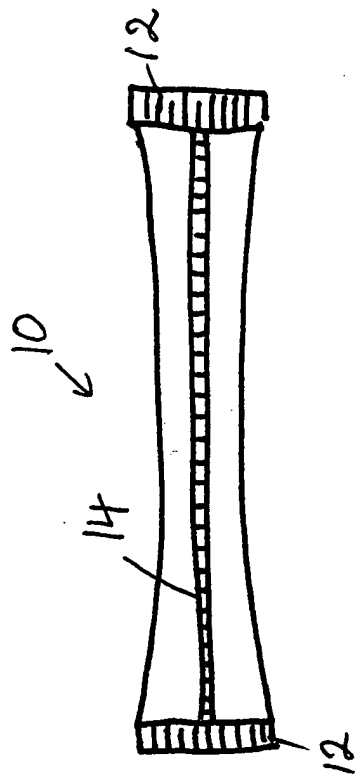


FIG. 1

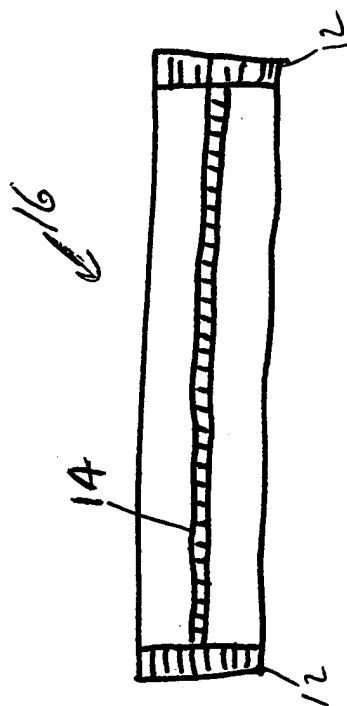


FIG. 2

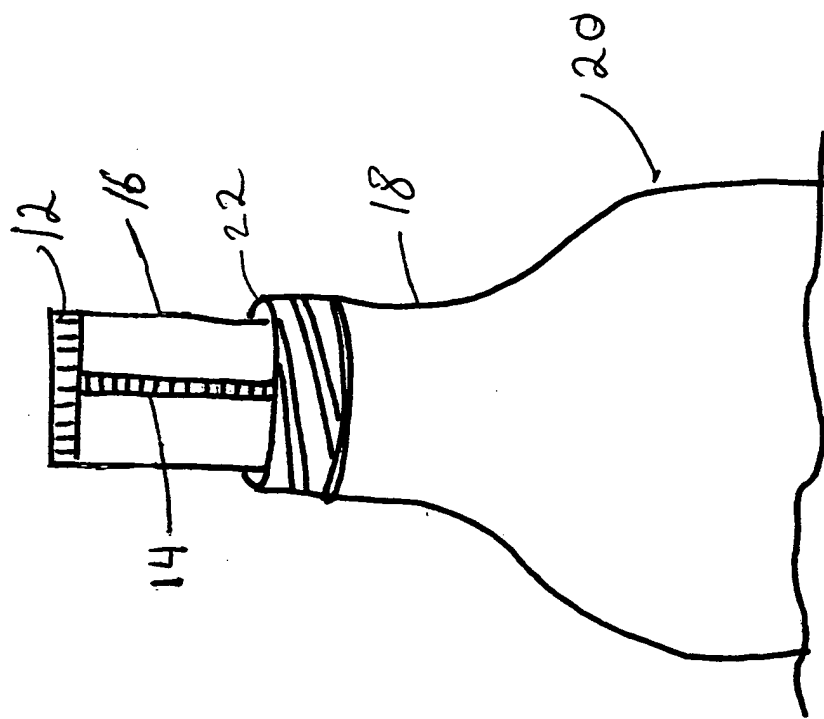


FIG. 3

EXHIBIT B

Reference relied upon by the Examiner in the final rejection of the claims:

U.S. Patent Application Publication No. 2002/0169092.